an assignee in possession, though the latter might be a very desirable tenant. Such a result has nothing to commend it.

It has been held that the destructive effect upon a condition of a license to assign may be nullified by the insertion in the license of a proviso that such license shall not authorize further assignments without the landlord's assent.[19] This expedient, if recognized, deprives Lord Coke's doctrine of much of its sting. It would seem that such a proviso should be equally efficacious if inserted in the original lease; as, by a statement that "no consent to any act by license or waiver shall be deemed a consent to any subsequent act."

MARKET VALUE AS A MEASURE OF COMPENSATION. — The term "market value" is used by the courts in three distinct senses: to denote (1) current price;[1] (2) cash value;[2] (3) the measure of recovery.[3] In this last sense, the term obviously means nothing. By cash value is meant the cash sum for which the property in question could probably be sold by the owner, making reasonable efforts, and taking reasonable time to effect a sale. It is sometimes expressed as the price the property "would bring at a fair public sale, when one party wanted to sell and the other to buy."[2] It would seem less confusing to confine the term "market value" to the current price in the vicinity at the time the property is to be valued. It is generally so confined when chattels are the subject of valuation.[4]

But assuming that there is no current price, the determination of value becomes a complicated question. The law as to chattels is fairly definite to the effect that the cost of reproduction, or the original cost with deductions for depreciation, where practicable, shall govern.[5] Strictly there can be no current price on a tract of land, because there are no two tracts exactly alike. Consequently, in the majority of condemnation proceedings courts are driven to determine market value in the sense of cash value. The test of cash value is the bid of a reasonable willing buyer who has in mind certain elements of valuation, such as prices paid at sales of similar property,[6] any use to which the property is reasonably adapted,[7] original

[19] Kew *v.* Trainor, 150 Ill. 150; Springer *v.* Chicago, etc. Co., 202 Ill. 17. See Wertheimer *v.* Hosmer, 83 Mich. 56. But see 3 BYTHEWOOD, CONVEYANCING, 3 ed., 685, 691; Mason *v.* Corder, 7 Taunt. 9, 11 n.

[1] See Dana *v.* Fiedler, 12 N. Y. 40; Cliquot's Champagne, 3 Wall. (U. S.) 114.

[2] See Lawrence *v.* Boston, 119 Mass. 126.

[3] See Reed *v.* O. & M. Ry. Co., 126 Ill. 48.

[4] See cases cited in note 5, *post*.

[5] Mather *v.* American Express Co., 138 Mass. 55 (plans of a house); Starkey *v.* Kelly, 50 N. Y. 677 (household furniture). See Simpson *v.* N. Y., N. H. & H. R. R., 38 N. Y. S. 341 (wearing apparel); Heald *v.* McGowan, 15 Daly (N. Y.) 233, affirmed, 117 N. Y. 643 (electrotype plates); Wamsley *v.* Atlas Steamship Co., 50 N. Y. App. Div. 199, reversed on another ground, 168 N. Y. 533 (photograph negatives). Conversely, if there is a current price, evidence as to cost, etc., is inadmissible. Althouse *v.* Alvord, 28 Wis. 577.

[6] Denham *v.* Dunbar, 103 Mass. 365; Patch *v.* Boston, 146 Mass. 52. The similarity between the properties must be affirmatively shown. Cummins *v.* D. M. & St. L. Ry. Co., 63 Ia. 397. In Pennsylvania evidence of sales of similar property is inadmissible. Railroad Co. *v.* Patterson, 107 Pa. St. 461. See also Stinson *v.* C., St. P. & M. Ry., 27 Minn. 284.

[7] Boom Co. *v.* Patterson, 98 U. S. 403. A recent case strikingly illustrates that an

cost,[8] cost of reproduction of improvements, depreciation,[9] "going concern" value,[9] and the like. Where there are buildings on the land, an important element to be considered is the cost of reproduction. As to when such evidence is admissible, the law is in some confusion. Where a city is condemning a water plant, reproductive cost is usually the controlling, if not the only, basis of valuation.[10] But the New York rule has been that it is inadmissible in evidence,[11] except, possibly, in the cross-examination of an expert on real estate values. This rule, however, seems unnecessary; for the jury is as competent as the expert to determine whether the cost of reproduction would influence the bid of the imaginary reasonable buyer. And in a recent New York eminent domain proceeding, direct evidence of the reproductive cost of tenements on the premises was held admissible. *Matter of Blackwell's Island Bridge*, 91 N. E. 278 (N. Y.). The court adopted as the sole test, whether the structures were so adapted to the land as to increase its value proportionately to the cost of the structures. This is but another way of stating the imaginary reasonable buyer test.

It may be supposed that an eccentric millionaire has built an expensive country establishment distant from any fashionable resort or transportation, so that no reasonable buyer would conceivably pay anything like the amount expended. Surely a railroad condemning the property could not limit compensation to the enhanced value of the land in the eyes of a business man; it is submitted that reproductive cost should here also be evidence of value. Although the exact problem seems not to have arisen,[12] it causes one to doubt the infallibility of the reasonable buyer test.

IMMUNITY FROM JUDICIAL CONTROL OF EXECUTIVE OFFICERS AND MEMBERS OF THE LEGISLATURE. — A suit against an executive officer may be really a suit against the state,[1] and, if so, may be maintained only with the state's consent. Equally fundamental is the principle that if the act sought to be enforced involves the determination of a political question, the courts have no jurisdiction of the subject matter of that question.[2]

improbable use will not be considered. A owned an area of land over which B had an easement of light, air, and access. The city condemned it for street purposes. A and B joined in a suit demanding the full current value of the land. B's easement was not materially damaged. The amount demanded involved the valuation for use with the easement removed; *i. e.*, for building purposes. The prospect of B's releasing the easement was improbable. *Held*, that the plaintiffs are not entitled to the compensation demanded. Boston Chamber of Commerce *v.* Boston, U. S. Sup. Ct., April 4, 1910.

[8] Brown *v.* Calumet River Ry. Co., 125 Ill. 600; St. L. & S. F. Ry. *v.* Smith, 42 Ark. 265. Original cost is of varying weight as evidence of cash value: unless the purchase was recent, the evidence is inadmissible. Lanquist *v.* Chicago, 200 Ill. 69.

[9] See Gloucester Water Co. *v.* Gloucester, 179 Mass. 365.

[10] See Kennebec Water District *v.* Waterville, 97 Me. 185; Newburyport Water Co. *v.* Newburyport, 168 Mass. 541; Gloucester Water Co. *v.* Gloucester, *supra*.

[11] Matter of Simmons, 130 N. Y. App. Div. 350, affirmed, 195 N. Y. 573.

[12] See Wall *v.* Platt, 169 Mass. 398.

[1] Hagood *v.* Southern, 117 U. S. 52.

[2] Mississippi *v.* Johnson, President, 4 Wall. (U. S.) 475; Dennett, Petitioner, 32 Me. 508. A political act is one committed by the sovereign to the final determination of a department other than the judicial department.